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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE EASTERN DISTRICT OF WASHINGTON**

9 **UNITED STATES OF AMERICA,**)

10 **Plaintiff,**)

11 **vs.**)

12 **KYLE STEVEN SCOTT CATE,**)

13 **Defendant.**)
_____)

CASE NO. 2:20-CR-108-RMP

2:21-CR-51-RMP

DEFENDANT’S SENTENCING

MEMORANDUM

14 **INTRODUCTION**

15 The charges to which Mr. Cate pled guilty have served as a major inflection
16 point for this 30-year-old defendant. The parties’ Rule 11(C)(1)(c) plea
17 agreement appropriately balances the interests of justice while not being greater
18 than necessary. In this memorandum, Mr. Cate offers a brief application of the
19 18 U.S.C. §3553 factors and discusses the only area of factual dispute with the
20 PSIR. However, regardless of how the Court resolves the remaining factual

1 matters, the plea agreement is fair, appropriate, and should be approved.

2 **I. The Nature and Circumstances of the Offenses and the History and**
3 **Characteristics of the Defendant.**

4 Mr. Cate pled to serious offenses, particularly the carjacking from M.P.
5 Mr. Cate understands that his actions had significant repercussions for M.P., and
6 his decision to accept the plea agreement recognizes and respects those impacts.

7 On the other side of the coin, though, Mr. Cate's history and characteristics
8 deserve significant consideration. From an early age, Mr. Cate witnessed and
9 personally suffered from domestic violence (arguably on the more severe end of
10 the continuum of domestic violence). See 2:20-cr-00108-RMP, ECF No. 57,
11 PSIR, ¶163 to ¶168. The record, confirmed by Mr. Cate's mother, reflects that
12 the repeated violence at his father's hand correlated to Mr. Cate spiraling into
13 substance abuse. See id. at ¶178. It is an unfortunate reality of this case that the
14 violence and dysfunction in Mr. Cate's youth seriously and adversely impacted
15 Mr. Cate's adjustment, coping skills, and decision-making ability. See id.
16 Substance abuse became a prevalent part of Mr. Cate's life as a young teenager
17 and, once his criminal record was established, Mr. Cate pinballed between periods
18 of custody and freedom. See id. at ¶136 to 159. When not in custody, Mr. Cate
19 often kept poor company. See id. In light of the well-known shortfalls in
20 education and employment opportunity which are so endemic to many tribal

1 communities, it is not hard to see how Mr. Cate found himself on the path to this
2 case. See e.g. Exhibit A, Colville Tribal Court Affidavit, page 2 (noting that
3 Mr. Cate was under the influence of drugs at the time of the carjacking offense).

4 **II. The Need for the Sentence Imposed to Reflect the Seriousness of the**
5 **Offenses, to Promote Respect for the Law, and to Provide Just Punishment**
6 **for the Offenses.**

7 The 112-month period of confinement and 3 years of supervisory release
8 undoubtedly support these considerations. Mr. Cate will spend years in prison for
9 the offenses of conviction and will face the risk of additional future confinement if
10 he reoffends while on supervision. The sentence reflects that abuse of drugs is not
11 an excuse, although it is an extenuating circumstance in appropriately measuring
12 the seriousness of the case. No one will look at this sentence and say that Mr.
13 Cate “got off easy.”

14 It is also important to note that Mr. Cate has shown a willingness to take
15 responsibility for his actions – even before his plea agreement. With respect to
16 Count 1 of the 2021 case (unlawful possession of firearms by a felon), Mr. Cate
17 admitted to possessing the firearms as soon as the Okanagan County deputies asked
18 him about it. See Exhibit B, Investigative Report for Incident S18-04699, pages
19 7-8. Mr. Cate could have remained silent when questioned, but he instead chose
20 to not lie to the officers. Id.

1 **needed educational or vocational training, medical care, or other**
2 **correctional treatment in the most effective manner.**

3 This statutory factor weighs strongly in favor of approving the parties'
4 proposed sentence.

5 Mr. Cate appreciates the significant time and effort that Probation took
6 during the presentence investigation to thoroughly portray how multiple risk
7 factors combined to influence his behavior. See PSIR, ¶¶161 to ¶¶171. The
8 presentence investigation, report, and the upcoming sentencing hearing culminate
9 a long period of largely solitary reflection for Mr. Cate, starting with his arrest by
10 tribal authorities in April of 2020 (he has remained in continuous custody since
11 that date). See PSIR, pg 2 and ¶¶159. During that period, Mr. Cate has undergone
12 a drug abuse evaluation and sought out care for mental health concerns. See id.
13 at ¶¶175. The proposed sentence is long enough to give him an opportunity to seek
14 appropriate BoP treatment and vocational services, but not so long that it risks
15 jeopardizing his ability to reintegrate into society at the end of his sentence.

16 *Mr. Cate asks that the Court consider recommending that he be allowed to*
17 *participate in RDAP at his earliest eligibility.*

18 **VI. The Kinds of Sentences Available.**

19 This factor does not weigh significantly in this case. See PSIR, ¶¶221
20 (reflecting ineligibility for probation on the 2020 case).

1 VII. The Sentencing Range Established by the Guidelines, and Pertinent
2 Policy Statements.

3 Mr. Cate generally agrees with Probation's careful calculation of the
4 guidelines range. The only area of dispute concerns whether the court should find
5 that Mr. Cate burglarized Dave Gun & Pawn in Riverside, Washington, on
6 September 13, 2018.

7 Probation included this additional offense in its guidelines calculations.
8 See ECF No. 57, ¶46, ¶48. The United States charged Mr. Cate with offenses
9 related to the pawn shop burglary (Counts 2 and 3 of the 2021 indictment) but
10 agreed to dismiss those charges as part of the plea agreement. See id. at ¶6.

11 The evidence does not support now including the pawn shop burglary as
12 offense conduct, as it does not meet the preponderance standard. The
13 investigative file is built on multiple hearsay statements that lack indicia of
14 reliability. See United States v. Berry, 258 F.3d 971, 976 (9th Cir. 2001) (“[w]e
15 have qualified the admissibility of hearsay at sentencing by requiring that such
16 statements be accompanied by ‘some minimal indicia of reliability’”). For
17 example, local investigators spoke with Mr. James Gee and Mr. Martin Stanley,
18 two men who supposedly spoke with Sage Wiggins, one of the alleged participants
19 in the burglary. See Exhibit C, ATF Warrant Declaration, Bates Nos. 14-15. Mr.
20 Stanley told investigators that Wiggins told him that Mr. Cate was with him during

1 the pawn shop burglary. Id. Mr. Gee, however, said that Mr. Stanley told him
2 (Gee) that Wiggins told him (Stanley) that Wiggins was with “some people” when
3 he burglarized the shop. Id. The evidence is therefore ambiguous in this critical
4 timeline of the initial reporting.

5 Authorities appear to have hinged much of their case on the fact they found
6 a flashlight inscribed with the name “Cate” in the vicinity of the pawn shop. See
7 Exhibit D, Investigative Report for Incident S19-05645, Bates No. 9.08. For
8 reasons that can be explored at the sentencing hearing, this is an unsupported link
9 to Kyle Cate.

10 Police collected fingerprint evidence from the Ford Taurus. The crime lab
11 *excluded* Mr. Cate as a potential contributor. See Exhibit E, Crime Laboratory
12 Report. No other biological, chemical, or other forensic evidence was collected
13 to link Mr. Cate to the pawn shop burglary. See Exhibit D, generally. Mr. Cate
14 expects the evidence will demonstrate that authorities recovered only one of the
15 weapons from the pawn shop. See Exhibit F, ATF Interview of Conway. No
16 evidence has been proffered linking Mr. Cate to the person from whom the weapon
17 was recovered. See id. In fact, Mr. Antwan Conway, who sold the weapon to a
18 third party in Spokane, confirmed to FBI agents that he did not recognize Mr. Cate
19 when agents showed him a photo. See id.

20 In sum, these investigative deficiencies do not support including the

1 burglary in the guidelines calculation.

2 However, as the Government noted in recent filings, the Court's findings on
3 this factual issue are important but the impact is minimal. See ECF No. 55,
4 Response to Defendant's Objections to the PSIR. More importantly, the parties'
5 proposed sentence is fully in line with the broader 18 U.S.C. §3553 construct.

6 **VIII. The Need for Unwarranted Sentencing Disparities.**

7 A key purpose of the Guidelines is to promote general uniformity in
8 sentencing. See United States v. Saeteurn, 504 F.3d 1175, 1181 (9th Cir. 2007).
9 Mr. Cate's sentence is either within or is very close to the guidelines range,
10 depending on how the Court makes its findings of fact. There is no evidence that
11 the 112-month sentence is disparate from the sentences of other, similarly situated
12 defendants.

13 **IX. The Need to Provide Restitution to Any Victims.**

14 As part of his plea agreement, Mr. Cate agreed to provide restitution, if
15 requested. See PSIR, ¶6. The defense is not aware that M.P. has requested
16 restitution but Mr. Cate would of course abide by his agreement to the fullest of
17 his ability, recognizing that his economic situation was and is exceedingly poor.

18 **CONCLUSION**

19 Mr. Cate is, in many ways, relieved for his upcoming sentencing hearing.
20 He wants to make amends, improve himself, and be ready for a new chance at

1 something better at the end of his sentence. The 112-month plea agreement
2 appropriately balances the statutory factors. As such, the Court should approve
3 the parties' agreed-upon sentence.

4 RESPECTFULLY SUBMITTED this 24th day of November, 2021.

5 Respectfully Submitted,

6 VIETH LAW OFFICES, CHTD.

7 /s/ Nicolas V. Vieth

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9 Attorney for Defendant – K. Cate

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11 /s/ Justin P. Lonergan

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of November 2021, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following person(s):

Vanessa Waldref, United States Attorney
Richard Barker, Assistant United States Attorney

/s/ Justin P. Lonergan
JUSTIN P. LONERGAN